

POLICY DECLARATIONS OF THE  
COMMISSION ON JUDICIAL PERFORMANCE  
Approved May 28, 1997

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## **PREAMBLE**

In consideration of the need for both uniformity and continuity of procedure and equitable, expeditious resolution of recurrent and detailed issues of procedure, the commission has authorized the formulation of the following policy declarations detailing commission policies, procedures and practices. These policy declarations are to reflect internal procedural detail neither duplicative of nor inconsistent with constitutional mandate or statutes or Commission Rules. These policy declarations are based upon concepts of utility, experience, and fair hearing of matters before the commission.

Rules referred to in the policy declarations are Commission Rules.

## **TITLE**

These policy declarations shall be known and may be cited as the Policy Declarations of the Commission on Judicial Performance.

## **DIVISION I. COMPLAINTS AND INVESTIGATIONS**

### **1.1 Anonymous Complaints**

Staff will evaluate anonymous complaints for merit; if a complaint is deemed sufficiently meritorious, it will be placed on the oversight agenda for consideration by the commission as to whether or not it should be docketed.

### **1.2 Staff Inquiries**

The staff inquiry is one of the commission's two levels of investigation. A staff inquiry may, but need not, precede a preliminary investigation. The purpose of a staff inquiry is to determine whether sufficient facts exist to warrant a preliminary investigation.

At the conclusion of a staff inquiry the commission may take any of the following actions:

- (1) Close the matter;
- (2) Authorize a preliminary investigation; or
- (3) Issue an advisory letter.

A judge must receive an inquiry letter and be afforded an opportunity to respond before an advisory letter may issue.

### **1.3 Staff Inquiry Letters**

An inquiry letter includes specification of the allegations and may include: the date of the conduct; the location(s) where the conduct occurred; if applicable, the name(s) of the case(s) or identification of the court proceeding(s) in relation to which the conduct occurred. If the

inquiry concerns statements made by or to the judge, the letter may also include the text or summaries of the comments.

The purpose of the inquiry letter is to afford the judge an opportunity to provide such matters as the judge may choose, including information about the factual aspects of the allegations and other relevant comment.

#### **1.4 Preliminary Investigations**

The preliminary investigation is the second of the commission's two levels of investigation. A preliminary investigation may follow a staff inquiry or may be instituted without a staff inquiry having been conducted. Where the allegations, if true, would warrant consideration of commission action greater than issuance of an advisory letter or when the use of investigation subpoenas and more formal investigative procedures are contemplated, the commission may commence with a preliminary investigation. The purpose of a preliminary investigation is to determine whether formal proceedings should be instituted and a hearing held.

At the conclusion of a preliminary investigation, or at the conclusion of a period of monitoring under rule 112, the commission may take any of the following actions:

- (1) Close the matter;
- (2) Issue an advisory letter;
- (3) Issue a notice of intended private admonishment or notice of intended public admonishment; or
- (4) Institute formal proceedings.

A judge must receive an inquiry letter and be afforded an opportunity to respond before an advisory letter may issue. A judge must receive a preliminary investigation letter and be afforded an opportunity to respond before a notice of intended private admonishment or notice of intended public admonishment may issue or formal proceedings may be instituted.

#### **1.5 Preliminary Investigation Letters**

A preliminary investigation letter provides the judge notice of the investigation and the nature of the charge under review and may include: the date of the conduct; the location(s) where the conduct occurred; if applicable, the name of the case(s) or identification of the court proceeding(s) in relation to which the conduct occurred. If the investigation concerns statements made by or to the judge, the letter may also include the text or summaries of the comments.

The purpose of the preliminary investigation letter is to afford the judge an opportunity to provide such matters as the judge may choose including information about the factual aspects of the allegations and other relevant comment.

## **1.6 Authorization for Staff Inquiries and Preliminary Investigations Between Meetings**

In instances where a matter comes to the attention of the commission between meetings which on its face appears to warrant a staff inquiry or a preliminary investigation and there has already been direct communication with the subject judge or other exigent circumstances exist, an effort should be made, whenever possible, to poll all of the commission members for authorization of a staff inquiry or preliminary investigation. If, in the discretion of the chairperson or acting chairperson, polling all of the members is not feasible, the chairperson or acting chairperson may authorize the staff inquiry or preliminary investigation. When a staff inquiry or preliminary investigation is authorized without a poll of the members, the members shall be promptly notified of the action taken.

## **1.7 Staff Inquiry and Preliminary Investigation Letters Not Authorized or Determined Not to be Warranted**

At the time a staff inquiry or preliminary investigation is authorized by the commission, the authorization may or may not include writing the judge a letter, in addition to other investigation. If information acquired during the inquiry or preliminary investigation establishes that there is no basis for further proceedings, the inquiry or preliminary investigation may be closed without the judge being contacted. An inquiry or preliminary investigation letter authorized by the commission need not be sent if information obtained by staff before the letter is sent shows that the letter may not be warranted.

## **1.8 Cases Removed From Active Calendar**

The commission may defer its consideration of a pending matter and direct that the staff inquiry or preliminary investigation be removed from the commission's active calendar. Circumstances which may warrant deferral in the commission's consideration of a matter include: when the case from which the complaint arose is still pending before the judge; when an appeal or ancillary proceeding is pending in which factual issues or claims relevant to the complaint are to be resolved; when criminal or other proceedings involving the judge are pending.

When a matter is removed from the commission's active calendar, it shall be placed on the commission agenda periodically as required by the circumstances, at intervals not to exceed six (6) months, and subject to active consideration at the discretion of the commission.

## **1.9 Admonishments to Persons Giving Interviews and Statements**

In the course of a staff inquiry or preliminary investigation, persons questioned or interviewed to ascertain the validity of allegations shall be admonished that the inquiry or investigation is confidential under the California Constitution and Commission Rules. When it appears that there may be use of the elicited information in connection with possible testimony or discovery, the person providing the information shall be so advised.

### **1.10 Consent, Preservation of Witness Interviews and Statements**

Consent to mechanical recording may be obtained from interviewees. Statements and interviews may be transcribed and preserved, and may be submitted to interviewees for signature and verification.

### **1.11 Independent Record of Witness Statements**

Where a witness statement or interview is not transcribed or recorded, it is not to be conveyed, commented upon or otherwise communicated to the commission by commission staff unless an independent memorialization of the statement has been prepared by staff (a writing other than a case memorandum or report from staff to the commission).

### **1.12 Investigation Subpenas**

Commission investigation subpoenas may issue upon application to the commission chairperson, vice-chairperson or the designee of either, stating the name, address and title, if any, of the person from whom information is sought, and whether or not a statement under oath is to be taken.

## **DIVISION II. APPEARANCES AND FORMAL PROCEEDINGS**

### **2.1 Opposition to Proposed Private and Proposed Public Admonishments; Statement of Objections and Appearance**

An appearance before the commission to contest the imposition of a proposed private admonishment under rule 114, or to contest the imposition of a proposed public admonishment under rule 116, means an opportunity for a judge to informally contest the imposition of an admonishment in argument before the commission based on the proceedings which resulted in the issuance of a notice of intended admonishment and the judge's statement of objections.

A judge's demand for an appearance after notice of intended private admonishment under rule 114, or notice of intended public admonishment under rule 116, may include a written statement of the judge's objections, both legal and factual, to the commission's proposed findings. The judge's statement may include points and authorities in support of any legal arguments and verified statements in opposition to the commission's factual findings.

The appearance before the commission will be scheduled after receipt of the judge's demand for appearance and statement of objections. The commission may request further briefing.

At the appearance before the commission, the judge may appear with or without counsel. The appearance is not an evidentiary hearing and there is no testimony by witnesses. Argument shall be limited to oral presentation not to exceed twenty (20) minutes by the judge and twenty (20) minutes by trial counsel or other attorney designated by the commission to present argument in support of the admonishment.

## **2.2 Prehearing Status Report**

In arranging for and scheduling the evidentiary hearing, either before the commission or special masters, on the charges set forth in the notice of formal proceedings, the commission may request a status report, submitted individually or jointly by the respondent judge and the examiner, to the commission or, if the hearing is before special masters, to the masters. The purpose of the report is to provide the commission or the masters with pertinent information for prehearing and to assure that the hearing proceeds efficiently.

A prehearing status report may include information concerning the following subjects:

- (1) The status of discovery and any issues known or anticipated regarding discovery;
- (2) A brief statement as to the nature of the evidence to be presented and the time required for presentation, including the number of documents, the number of witnesses and the witnesses' availability for hearing;
- (3) A statement regarding numbering and exchange of exhibits, any briefs pertaining to proposed motions and the need for any pretrial briefs;
- (4) Proposed dates for the completion of all discovery, proposed hearing dates and such other dates as counsel, the masters, or the commission may request or specify;
- (5) Whether or not the parties have discussed the possibility of resolution of the matter pursuant to rule 127 (to be answered yes or no, without disclosing the substance of the communication or the parties' positions);
- (6) Any other issues pertaining to hearing preparation or the hearing itself; and
- (7) Such other matters or issues as the commission or the masters may specify.

## **2.3 Prehearing Conference**

The commission or the special masters may require a prehearing conference, either by telephone or in person, before the hearing. The masters may determine whether prehearing conference orders need be in writing.

## **2.4 Agreed Statement and Discipline by Consent**

An agreed statement under rule 125(a) may be offered by the respondent judge and the examiner in place of all or part of the evidence after institution of formal proceedings. An agreement between the respondent judge and the examiner for discipline by consent under rule 127 may be submitted to the commission after institution of formal proceedings. The examiner is responsible for handling negotiations with the respondent judge or respondent judge's counsel concerning agreed statements and agreements for discipline by consent.

## **DIVISION III. COMMISSION ADMINISTRATION**

### **3.1 Setting Regular and Special Meetings**

(1) Before the end of each calendar year, staff will propose a choice of dates for each meeting for the next calendar year. At its March organizational meeting, the commission will approve the meeting dates for the remainder of the year.

(2) A special meeting shall be called (a) upon not less than five (5) days notice by the chairperson or acting chairperson, or (b) upon notice of request of not less than four (4) members.

### **3.2 Organizational Meeting; Election of Chairperson and Vice-Chairperson**

At its March meeting each year, the commission shall organize itself for the conduct of business for the ensuing year and shall select a chairperson and vice-chairperson.

### **3.3 Preparation of Annual Report**

At the end of each calendar year, staff will prepare a draft annual report for circulation to the commission or such members as the commission delegates for review of the draft report. After the draft report is reviewed and suggestions made, staff will revise the draft report in accordance therewith and will submit the report in final form to the chairperson for signature during January of each year for the preceding calendar year.

### **3.4 Availability of Commission Rules and Policy Declarations**

The rules and policy declarations of the commission will be published in the commission's annual report. The commission's rules and policy declarations are also to be published, to the extent possible, in legal publications including California Official Reports Advance Sheets (Bancroft Whitney), California Reporter Advance Sheets (West Publishing Company), California Rules of Court—State (West Publishing Company), West's Annotated California Codes (West Publishing Company), Deering's California Codes (Bancroft Whitney), California Jurisprudence (Bancroft Whitney), Standard California Codes Six-In-One and Four-In-One (Matthew Bender), and the Westlaw database.

### **3.5 Review of Commission Rules, Proposed Changes**

Every two years, in even numbered years, the commission shall review its rules and any proposed enactments, amendments or repeals. Comments regarding proposed changes to the rules which are received by the commission other than during its bi-annual rules review may be considered by the commission and either deferred to the next review of the rules or acted upon as may be appropriate.



### **3.6 Policy Declarations**

When there is commission approval for staff to draft a policy declaration, any proposed enactment, amendment or repeal shall be submitted to each commissioner at least ten (10) days immediately preceding the meeting at which a vote thereon is taken. The commission may have the proposed enactment, amendment or repeal reviewed by the rules committee prior to a vote by the commission.

### **3.7 Staff Authorization for Announcements Between Meetings**

When the director believes an announcement pursuant to California Constitution, article VI, section 18(k) or pursuant to rule 102(c) is appropriate between meetings in a particular proceeding, the director shall so advise the chairperson or acting chairperson. An effort should be made, whenever possible, to poll all of the members for authorization of the announcement. If, in the discretion of the chairperson or acting chairperson, polling all of the members is not feasible, the chairperson or acting chairperson may authorize the announcement. When an announcement is authorized without a poll of the members, the members shall be promptly notified of the action taken.

### **3.8 Duties of Trial Counsel**

Trial counsel shall serve as examiner in formal proceedings instituted by the commission and shall represent the commission in litigation before the California Supreme Court and other courts when directed to do so by the commission. Trial counsel shall serve under the direction of the commission's director-chief counsel.

### **3.9 Commission Counsel**

The commission has established the position of commission counsel and shall designate an attorney to serve as its commission counsel to assist the commission in its consideration of matters in which formal proceedings have been instituted and an evidentiary hearing before special masters or the commission has been held. Commission counsel shall also assist the commission in its consideration of matters in which judges oppose intended private admonishments or intended public admonishments.

Commission counsel shall not assist the commission in its adjudication or deliberations in any case in which commission counsel earlier participated in an investigation or adversarial proceeding in another capacity as an attorney for the commission.

Commission counsel shall assist the commission during the adjudicatory stage of cases in the preparation of determinations and orders.

Commission counsel shall present to the commission proposals for disposition of matters in which formal proceedings have been instituted which have been jointly offered by trial counsel and the judge or judge's counsel. After institution of formal proceedings, commission

counsel shall be responsible for requesting the appointment of special masters by the Supreme Court and shall serve as the commission's liaison to special masters appointed in formal proceedings.

Commission counsel shall perform such additional duties as may be assigned by the commission.

### **3.10 Records Disposition Policy**

At the beginning of each calendar year, the commission shall destroy all files which did not result in an advisory letter, public or private admonishment, public reproof, censure, removal or involuntary retirement, or resignation or retirement with proceedings pending as follows:

- (1) Files involving complaints against municipal or superior court judges dated or docketed by the commission in the thirteenth year prior to the new calendar year; and
- (2) Files involving complaints against appellate or Supreme Court justices dated or docketed by the commission in the nineteenth year prior to the new calendar year.

### **3.11 Biennial Adjustment of Gift Limitation Amount**

(1) Code of Civil Procedure section 170.9(a) limits to \$250 the total value of gifts that an individual judge may accept from any single source in any calendar year. Section 170.9(d) requires that the commission adjust that amount biennially to reflect changes in the Consumer Price Index, rounded to the nearest \$10. Since section 170.9(d) took effect January 1, 1995, an adjustment must be made in subsequent odd-numbered years (commencing in 1997).

(2) The adjusted gift limitation amount shall apply as of January 1 of the year in which the adjustment is announced and shall remain in effect until January 1 of the next odd-numbered year.

(3) The adjusted gift limitation amount shall be calculated by the commission as follows:

(a) The base dollar amount (\$250) shall be increased or decreased by the percentage change in the annual average California Consumer Price Index (CCPI) for all urban consumers from the base year (1994) to the end of the calendar year immediately preceding the year of adjustment.

(b) Formula: The base dollar amount (\$250) is multiplied by a fraction whose numerator is the annual average CCPI for the even-numbered year preceding the year of adjustment and whose denominator is the 1994 annual average CCPI (151.5). The resulting dollar amount is rounded to the nearest \$10, unless that amount ends in the numeral five with no cents, in which case it is not rounded in either direction.

## **DIVISION IV. DISCLOSURE OF INFORMATION**

### **4.1 Public Safety**

The disclosure of information concerning a threat to public safety under rule 102(f) may be made by the chairperson, the director or the designee of either.

### **4.2 Disclosure of Information to Prosecuting Authorities**

When, in the course of evaluating complaints or conducting investigations, commission staff acquires information revealing possible criminal conduct by a judge, former judge or by any other individual or entity, such information shall be brought to the attention of the commission at the earliest possible opportunity for consideration of a referral of the information to prosecuting authorities. Such a referral requires a vote of a majority of the commission members.

### **4.3 Disclosure of Disciplinary Records to Public Entity Upon Request/With Consent of Judge**

When a judge requests or consents to the release of commission records of disciplinary action under rule 102(h), the judge's request must be made in writing to the commission office. If the judge is consenting to a request by a public entity for records of disciplinary action, the judge's written consent and a copy of the entity's request must be received by the commission office. Copies of any information released to the public entity shall be provided simultaneously to the judge requesting or consenting to the release of records.

### **4.4 Disclosure of Records of Disciplinary Action to Appointing Authorities**

Requests by an appointing authority for records of disciplinary action pursuant to California Constitution, article VI, section 18.5 or rule 102(i) must be made in writing to the commission office. Copies of any information provided to the appointing authority shall be provided simultaneously to the applicant judge.

### **4.5 Disclosure of Information Regarding Pending Proceedings to Appointing Authorities**

Requests by an appointing authority for information regarding pending investigations or proceedings pursuant to rule 102(j) must be made in writing to the commission office. Copies of any information provided to the appointing authority shall be provided simultaneously to the applicant judge.

### **4.6 Disclosure of Information to Public Entities Upon Retirement or Resignation**

When information is disclosed to a public entity upon a judge's retirement or resignation pursuant to rule 102(k), the commission may, in its discretion, notify the judge that such disclosure is being made. Copies of any information being disclosed to the public entity may, in the commission's discretion, be made available to the judge who has retired or resigned.

## **DIVISION V. DISABILITY RETIREMENT APPLICATIONS**

### **5.1 Disability Applications: Confidentiality**

The commission shall treat as confidential any information which is presented to the commission by a judge for retirement purposes, except that the fact that an application has been filed and has been approved or rejected or remains pending may be revealed.

### **5.2 Disability Applications: Medical Consultants**

The commission may arrange with the University of California Medical Centers and/or other qualified medical practitioners for medical consultants to provide independent medical examinations for disability retirement applicants, to assist the commission as necessary in evaluating disability retirement applications under Government Code section 75060, and for reevaluation under Government Code section 75060.6.

### **5.3 Reexamination of Judges Retired for Disability**

When approving a request for disability retirement, the commission shall decide on a case-by-case basis whether and when the judge shall be required to be reexamined pursuant to Government Code section 75060.6. Notwithstanding such decision, a judge retired for disability may be required to undergo reexamination pursuant to Government Code section 75060.6.

### **5.4 Procedure in Disability Retirement Matters**

(1) An application for disability retirement must include: a consent to disability retirement, executed by the judge, and a medical certificate of disability, executed under penalty of perjury by a licensed physician. To complete the application, the commission ordinarily will require a medical report prepared by that physician in support of certification and all pertinent medical documentation.

(2) When a judge submits an application for disability retirement, the commission will advise the judge if the certifying physician's report or other medical documentation supporting the application is inadequate, and will give the judge thirty (30) days to supply more complete data.

(3) Following receipt of a complete application, the commission may request review of medical reports and documents by independent consultants and/or medical examiners. One or more independent medical examinations may be requested within one hundred twenty (120) days of the first commission meeting after receipt of complete medical records. This time may be extended for good cause. If an independent medical examination is conducted, the commission will provide a copy of the examiner's report to the judge.

(4) Within sixty (60) days of the first commission meeting after receipt of all reports by consultants and medical examiners, the commission will either approve the application or tentatively deny it.

(5) If the commission tentatively denies the application, the commission will within thirty (30) days issue a tentative decision setting forth the reasons for the denial. The tentative decision will be provided to the judge upon issuance.

(6) A tentative denial becomes final thirty (30) days after issuance unless, within thirty (30) days of the tentative denial, the judge files a request to present additional evidence. Within thirty (30) days of the first commission meeting after such filing, the commission will appoint a special master authorized to take evidence, obtain additional medical information, and take any other steps the special master deems necessary to resolve the matter.

(7) Within one hundred eighty (180) days after the appointment of a special master, the master will refer the matter back to the commission with a report containing proposed findings.

(8) Within ninety (90) days of the first commission meeting following such referral, the commission will make a decision either approving the application and referring it to the Chief Justice or denying the application and advising the Chief Justice.

## **5.5 Disability Applications: Burden of Proof**

Unless Government Code section 75062, 75063 or 75064 applies, a judge seeking disability retirement must establish by a preponderance of the evidence that the judge is unable to discharge efficiently the duties of judicial office by reason of mental or physical disability that is or is likely to become permanent.

## **5.6 Procedure in Restoration to Capacity Matters**

(1) An application for restoration to capacity must be in writing, executed by the judge, and be accompanied by one or more medical reports sufficient to establish that the judge is no longer mentally or physically incapacitated and is capable of discharging efficiently the duties of judicial office.

(2) When a judge submits an application for restoration to capacity, the commission will advise the judge if the certifying physician's report or other medical documentation supporting the application is inadequate, and will give the judge thirty (30) days to supply more complete data.

(3) Following receipt of a complete application, the commission may request review of medical reports and documents by independent consultants and/or medical examiners. One or more independent medical examinations may be requested within one hundred twenty (120) days of the first commission meeting after receipt of complete medical records. This time may be extended for good cause. If an independent medical examination is conducted, the commission will provide a copy of the examiner's report to the judge.

(4) Within sixty (60) days of the first commission meeting after receipt of all reports by consultants and medical examiners, the commission will either approve the application or tentatively deny it.

(5) If the commission tentatively denies the application, the commission will within thirty (30) days issue a tentative decision setting forth the reasons for the denial. The tentative decision will be provided to the judge upon issuance.

(6) A tentative denial becomes final thirty (30) days after issuance unless, within thirty (30) days of the tentative denial, the judge files a request to present additional evidence. Within thirty (30) days of the first commission meeting after such filing, the commission will appoint a special master authorized to take evidence, obtain additional medical information, and take any other steps the special master deems necessary to resolve the matter.

(7) Within one hundred eighty (180) days after the appointment of a special master, the master will refer the matter back to the commission with a report containing proposed findings.

(8) Within ninety (90) days of the first commission meeting following such referral, the commission will make a decision either approving the application for restoration to capacity or denying it.